

Message Text

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ACTION IO-14

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AMCONSUL JOHANNESBURG

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E.O. 11652: N/A

TAGS; PFOR, UN

SUBJECT: UN CONFERENCE ON SUCCESSION OF STATES IN

- RESPECT OF TREATIES

1. CONSIDERATION OF ARTICLE 33 POSTPONED FOLLOWING LONG DEBATE RE FRENCH AND SWISS AMENDMENT AND FRG AMENDMENT. THERE APPEARS TO BE A CLEAR SENTIMENT FAVORING CONTINUITY PRINCIPLE AND OPPOSED TO THESE AMENDMENTS. THE DEBATE IS IN FACT FOCUSING ON PROPOSAL TO DELETE ARTICLE 33 (3). WE WILL SUPPORT DELETION OF ARTICLE 33 (3) IF IT COMES TO A VOTE.

2. ARTICLES 34, 35, 36, 37 AND 38 REFERRED TO DRAFTING COMMITTEE WITHOUT CHANGE. SWEDEN AND SWAZILAND WITHDREW PROPOSAL TO DELETE ARTICLE 36 BUT REQUESTED VOTE ON ARTICLE 36. IT WAS APPROVED 60-3-12. FOLLOWING A NUMBER OF STATEMENTS IN OPPOSITION, FRG WITHDREW PROPOSED ARTICLE 36 BIS. MEXICO WITHDREW A SURPRISING PROPOSAL TO DELETE ARTICLES 38 AND 3..

3. THERE HAS BEEN EXTENSIVE DISCUSSION OF U.S. PROPOSAL FOR A NEW ARTICLE 37 BIS CONCERNING PROCEDURES TO DEAL WITH OBJECTIONS TO SUCCESSION OF STATES TO TREATIES. US HAS INTRODUCED REVISED TEXT AS FOLLOWS:

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QUOTE AN OBJECTION TO SUCCESSION TO A TREATY ON THE GROUND OF INCOMPATIBILITY WITH THE OBJECT AND PURPOSE OF THE TREATY OR ON THE GROUND THAT THE SUCCESSION OF THE STATE TO THE TREATY WOULD RADICALLY CHANGE THE CONDITIONS OF ITS OPERATION, SHALL BE MADE BY NOTIFICATION IN WRITING TO THE PARTIES TO THE TREATY, AND TO

THE SUCCESSOR STATE WHEN APPROPRIATE, WITHIN TWELVE MONTHS EITHER OF THE DATE OF THE SUCCESSION OF STATES IF THE OBJECTION IS MADE BY THE SUCCESSOR STATE OR OF THE RECEIPT OF THE NOTIFICATION OF SUCCESSION IF THE

OBJECTION IS MADE BY A PARTY TO THE TREATY. IN CASE OF AN OBJECTION TO SUCCESSION TO A TREATY PURSUANT TO PARAGRAPH 1, THE SUCCESSOR STATE AND THE OTHER STATE PARTY OR PARTIES SHALL SEEK A SOLUTION THROUGH A PROCESS OF CONSULTATION AND NEGOTIATION. IF, UNDER PARAGRAPH 2, NO SOLUTION HAS BEEN REACHED WITHIN A PERIOD OF TWELVE MONTHS FOLLOWING THE DATE ON WHICH THE OBJECTION WAS RAISED, A RESOLUTION OF THE MATTER SHALL BE SOUGHT THROUGH THE MEANS INDICATED IN ARTICLE 39 BIS. UNQUOTE. FURTHER DISCUSSIONS POSTPONED.

4. FOLLOWING EXTENSIVE DISCUSSIONS OF THE U.S. PROPOSAL AND THE NETHERLANDS PROPOSAL FOR A NEW ARTICLE 39 BIS ON DISPUTE SETTLEMENT, THESE ARTICLES HAVE BEEN REFERRED TO AN INFORMAL WORKING GROUP. THERE IS A CLEAR CONSENSUS AGAINST THE NETHERLANDS PROPOSAL WHICH WOULD PROVIDE FOR COMPULSORY DISPUTE SETTLEMENT BY ARBITRATION OR THE ICJ WITHOUT AN OPTING OUT ALTERNATIVE, AND DISCUSSION HAS FOCUSED ON THE U.S. PROPOSAL. WHILE U.S. PROPOSAL UNCLASSIFIED

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HAS RECEIVED PREPONDERANCE OF SUPPORT, IT APPEARS LIKELY THAT IT WILL HAVE TO BE MODIFIED TO WIN CONFERENCE APPROVAL.

5. ARGENTINA HAS PROPOSED A NEW ARTICLE 39 TER WITH THE FOLLOWING TEXT: QUOTE WHEN THERE IS A DISPUTE CONCERNING SOVEREIGNTY OVER A TERRITORY WHICH IS UNDER FOREIGN DOMINATION OR IS A COLONIAL DEPENDENCY, AND THE UNITED NATIONS HAS RECOMMENDED MEANS FOR A PEACEFUL SETTLEMENT AND THERE IS THEN A SUCCESSION OF STATES, THE SUCCESSOR STATE SHALL NOT BE BOUND BY TREATIES FALLING UNDER ARTICLE 11 OR ARTICLE 12, PARAGRAPHS 1 AND 2, CONCLUDED BY THE PREDECESSOR STATE WITH RESPECT TO THE DISPUTED TERRITORY. UNQUOTE

6. ISRAEL DELEGATE HAS INFORMED US THAT HE EXPECTS MOVE BY PLO TO SIGN FINAL ACT. HE ALSO ASKED US TO RECOMMEND TO IAN SINCLAIR (CHAIRMAN OF WEO GROUP) THAT ISRAEL BE PERMITTED TO JOIN WEO GROUP AT THE CONFERENCE. WOLF

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